

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

ANDREW L. COLBORN,

Plaintiff

NETFLIX, INC., et al.,

Defendants.

Case No. 19-CV-484

**SUPPLEMENTAL SUR-REPLY BRIEF IN OPPOSITION TO MOTION TO DISMISS
FILED BY LAURA RICCIARDI, MOIRA DEMOS, AND CHROME MEDIA, LLC**

INTRODUCTION

With the reply brief filed on June 13, 2019, by Laura Ricciardi, Moira Demos, and Chrome Media, LLC, in support of their motion to dismiss,¹ Defendants submitted a second Declaration of Moira Demos that made assertions about Chrome Media, LLC in an attempt to support Defendants' service-of-process arguments.

Plaintiff's counsel subsequently discovered that these statements are inconsistent with statements that Ms. Demos made in documents that have been filed with the State of California Secretary of State. The documents are attached as an exhibit to the proposed Supplemental Declaration of Debra L. Bursik submitted herewith.

Plaintiff respectfully requests that the Court consider these documents 1) as support for Plaintiff's assertion that Chrome Media, LLC was validly served with process prior to removal; 2) in assessing the Defendants' credibility as to factual matters; and 3) as support for Plaintiff's request for discovery and a hearing prior to resolution of Defendants' motion.

¹ Defendant Netflix, Inc. has not challenged timely service of process prior to removal.

PERTINENT FACTS

In a declaration filed with Defendants' reply brief, Defendant Moira Demos stated, in pertinent part, that the company that she co-owns, Chrome Media, LLC:

- “does not maintain offices at 15821 Ventura Blvd. in Encino, California.”
- “has never conducted business from that address and neither Ms. Ricciardi nor I have ever occupied offices there.”

Dkt #87 at ¶5. Ms. Demos expressly stated that the statements were made under penalty of perjury. *Id.* at p. 2.

Section 17708.02 of the California Corporations Code permits a foreign limited liability company (Chrome Media is a New York limited liability company) to apply for a certificate of registration to transact business in California by applying to the Secretary of State for filing on a form prescribed by the Secretary of State, and stating, among other things, “the street address of the foreign limited liability company’s principal office and of its principal business office in [California], if any.”

In support of its California registration as a foreign limited liability corporation under this section, Chrome Media, LLC, submitted a document to the Secretary of State in 2016, signed by Moira Demos, which contains a space indicated for the “Street Address of Principal Office” of the business. Declaration of Debra Bursik, Ex. 3. The words “15821 Ventura Blvd., Ste. 500, Encino, California,” are printed on the form in the corresponding space. *Id.* The form also indicates above the signature line that the information provided is “true and correct.” *Id.*

The form also contains another space indicated for the name and address of the Chief Executive Officer. Ms. Demos’ name as CEO is listed and the address given is “15821 Ventura Blvd., Ste. 500, Encino, California.” Bursik Decl., Ex. 3.

In 2017, Ms. Demos signed a second form that is on file with the California Secretary of State and which represents that there was no change as to the information provided previously by Chrome Media, LLC. *Id.*, Ex. 2.

ARGUMENT

I. Ms. Demos' Declaration Conflicts With the California Secretary of State Information Statement.

As is evident from the recitation of facts above, there is a conflict between what Ms. Demos has stated in this Court and what she stated in the filing with the state of California.

Plaintiff also notes that the California filings also reveal that the Ventura Boulevard address is listed as Moira Demos' office as CEO – an officer – of Chrome Media. Therefore, this filing shows that the service of process left with receptionists at that address (as stated in the receptionists' declarations. submitted by Defendants) were left with a representative in an office that is listed as an office of an officer of Chrome Media, LLC (regardless of whether Ms. Demos physically occupied that office at the time). Declaration of Tal Benari, Dkt #38, at ¶¶17-21; Declaration of Natalia Canaan, Dkt #39, at ¶¶5-8; Declaration of Danielle Rodriguez, Dkt #40, at ¶¶5-8. The declarations established that the receptionists are the gatekeepers for anyone who arrives at the Ventura Boulevard address with service of process. *Cf. Keske v. Square D Co.*, 58 Wis.2d 307, 315, 206 N.W.2d 189 (1973). Under these circumstances, Defendants have created a situation in which the receptionists – with whom service of process was left on multiple occasions, as noted above – are persons apparently in charge of Chrome Media's CEO's office for purposes of Wis. Stat. §801.11(5)(a).

Plaintiff further respectfully submits that these documents demonstrate that discovery is appropriate so that Plaintiff may determine for what other purposes Chrome Media may have

used the Ventura Boulevard address. A hearing should then be held to determine the facts pertaining to service of process.

CONCLUSION

For the following reasons, Plaintiff respectfully requests that the Court either deny the Defendants' motion to dismiss or, alternatively, permit additional discovery and schedule a hearing to determine the facts pertinent to the motion.

Dated this 24th day of June, 2019.

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